

1 FRANK KELLY (SBN 83473)  
fkelly@shb.com  
2 AMIR NASSIHI (SBN 235936)  
anassihi@shb.com  
3 EDWARD B. GAUS (SBN 289561)  
egaus@shb.com  
4 **SHOOK, HARDY & BACON L.L.P.**  
555 Mission Street, Suite 2300  
5 San Francisco, CA 94105  
Tel: (415) 544-1900  
6 Fax: (415) 391-0281

7 Attorneys for Defendant  
8 BAYER HEALTHCARE LLC,  
erroneously sued as BAYER CORPORATION

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 BEN CASILLAS JR; APRIL CASILLAS;  
12 SAUL SANCHEZ; and LILIAN SOTO,

13 Plaintiffs,

14 vs.

15 BAYER CORPORATION and DOES 1 to  
100, inclusive,

16 Defendants.

17  
18 APRIL CASILLAS, INDIVIDUALLY  
19 AND AS THE SUCCESSOR-IN-  
INTEREST OF BEN CASILLAS JR;  
20 AND BEN CASILLAS, SR., AS  
GUARDIAN AD LITEM FOR R. C., A  
MINOR AND V. C., A MINOR,

21 Plaintiffs,

22 v.

23 BAYER CORPORATION and DOES 1 to  
24 100, inclusive,

25 Defendants.

No. 3:23-cv-01609-AMO (*Consolidated with*  
*3:23-cv-02199-AMO*)

**DECLARATION OF FRANK KELLY IN  
SUPPORT OF PROPOSED STIPULATED  
ELECTRONICALLY STORED  
INFORMATION PROTOCOL**

1 **DECLARATION**

2 I, Frank Kelly, declare and state as follows:

3 1. I am an attorney licensed to practice before all of the courts of the State of  
4 California, and am a partner of the law firm of Shook, Hardy & Bacon L.L.P., and counsel of  
5 record for Defendant Bayer Healthcare LLC, erroneously sued as Bayer Corporation (“Bayer”)  
6 in the above-titled action. This declaration is based upon my personal knowledge, except as to  
7 those matters stated on information and belief and, as to those matters, I believe them to be  
8 true. If called upon as a witness, I could and would competently testify as to the facts set forth  
9 therein.

10 2. Counsel for Plaintiffs Ben Casillas Jr. and Saul Sanchez (“Plaintiffs”) and  
11 Defendant Bayer Corporation (“Bayer”) (collectively, “the parties”) met and conferred  
12 regarding the necessity for entry of Stipulated Forms and Format for Document Production in  
13 this action. The Parties agreed to the use of an ESI Protocol that differs from the Northern  
14 District of California’s Model Order. The Parties submit a stipulated Proposed Forms and  
15 Format for Document Production, filed concurrently with this Declaration. This Declaration,  
16 submitted pursuant to the Court’s Standing Order, explains why use of one of the model orders  
17 is not practicable in this case.

18 3. The Parties have entered into this stipulated Forms and Format for Document  
19 Productions (“Protocol”) to facilitate the just, speedy, and inexpensive conduct of discovery  
20 involving electronically stored information (“ESI”).

21 4. Defendant Bayer is involved in numerous simultaneous actions involving  
22 company documents and has developed preferred methods for the processing and production  
23 of documents that are consistent with the Federal Rules of Civil Procedure and local rules  
24 across many jurisdictions. Bayer intends to use these preferred methods in the form of the  
25 stipulated proposed ESI Protocol to streamline discovery processes across matters.

26 5. The stipulated proposed ESI Protocol adds detail but does not detract from the  
27 Court and parties’ shared goal of efficient execution of discovery.  
28

1           6.       The parties agree that the use of the proposed ESI protocol allow for the parties  
2 and the Court to ensure that there is an accurate and complete understanding of the forms and  
3 formats for document production.

4           7.       The Parties stipulate and agree that the proposed Forms and Format for  
5 Document Productions is narrowly-tailored to the instant case, and will best promote  
6 efficiency, fairness, and will reduce the likelihood of disputes that might otherwise require the  
7 Court's intervention.

8  
9           I declare under penalty of perjury that the foregoing is true and correct. Executed on  
10 September 20, 2023.

11                               /s/Frank Kelly  
12                               Frank Kelly  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28